

REMARKS:

This paper is herewith filed in response to the Examiner's final Office Action mailed on December 9, 2008 for the above-captioned U.S. Patent Application, and to re-submit amendments that were originally filed in a Response to the above final Office Action filed on February 2, 2009 but not entered as indicated in the Examiner's Advisory Action dated April 1, 2009. The above office action is a final rejection of claims 1-22 and 24-30 of the application.

More specifically, the Examiner has rejected claims 12-14 under 35 USC 112, first paragraph, as failing to comply with the written description requirement; rejected claims 1, 2, 8-9, 15-16, 19, and 24-25 under 35 USC 103(a) as being unpatentable over by Forssell (EP1006695) in view of Bender (US6,377,814) Soulabail (US20020071415), and Simard (US6,940,826); rejected claims 3 and 26 under 35 USC 103(a) as being unpatentable over Forssell in view of Bender, Soulabail, Simard, and further in view of Upp (US2004/0002351); rejected claims 4-5, 10, 20-21, and 27-28 under 35 USC 103(a) as being unpatentable over Forssell in view of Bender, Soulabail, Simard, and further in view of Lechleider (US6,058,109) and Rinchiuso (US2004/0196861); rejected claims 6, 11, and 29 under 35 USC 103(a) as being unpatentable over Forssell in view of Bender, Soulabail, Simard, Lechleider, Rinchiuso and in further view of Schieder (EP1139613); rejected claims 7 and 30 under 35 USC 103(a) as being unpatentable over Forssell in view Bender, Soulabail, Simard, and further in view of of Kajizaki (US2001/0055317); rejected claim 12 under 35 USC 103(a) as unpatentable over Forssell in view of Bender; rejected claim 13 under 35 USC 103(a) as being unpatentable over Forssell in view of Bender and further in view of Upp; rejected claim 14 under 35 USC 103(a) as being unpatentable over Forssell in view of Bender, and further in view of Kajizaki; rejected claims 17-18 under 35 USC 103(a) as being unpatentable over Forssell in view of Bender, Soulabail, Simard, and further in view of Schieder; and rejected claim 22 under 35 USC 103(a) as being unpatentable over Forssell in view of Bender and Simard. The Applicants respectfully disagree with the rejections.

Claims 1, 8, 12, 15, 22, and 24 are identically amended as in the above mentioned Response to final Office Action filed on February 2, 2009. Support for the amendments can be found at least

in paragraph [0022] of the published application. No new matter is added.

The Applicants note that claims 1, 8, 12, 15, 22, and 24 have been amended in accordance with an exemplary embodiment of the invention to indicate that “post-speech packets” are sent responsive to an indication that speech packets are no longer forthcoming. This feature differentiates the present invention from the system of Bender. In Bender “the null data frames” are sent responsive to an expiry of “a maximum-zero-traffic period”. The expiry of “a maximum-zero-traffic period” is detected using a timer (column 3, line 63 – column 4, line 12).

Regarding the claim rejections under 35 USC § 112:

Claims 12 -14 have been rejected as the original specification, allegedly, does not describe post speech packets using the term “transferable” as in claim 12. The Applicants note that claim 12 has been amended to remove the phrase “which are transferable.” The Applicants submit that the rejections of claims 12-14 under 35 USC 112, first paragraph, are seen as overcome and the rejection should be removed.

The Applicants note that, as stated above, a Response to the above referenced final Office Action, which included the amendments resubmitted herein, was filed on February 2, 2009. On April 1, 2009 the Examiner responded with an Advisory Action wherein it was indicated that the request for reconsideration and the Amendments did not place the Application in a condition for Allowance. The Applicants disagree with the Examiner.

Regarding the claim rejections under 35 USC § 103:

In the Office Action the Examiner rejects independent claims 1, 8, 12, 15, 22, and 24 as being obvious. The Examiner uses as the closest prior art EP 1 006 695 (Forssell), and combines Forssell with several other documents. In the Office Action the Examiner admits in several places that Forssell does not disclose “post-speech packets,” and compensates this deficiency by using several other documents, in particular Bender (US 6377814). The Applicants disagree with the

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rejections.

The Applicants note that in the Advisory Action the Examiner states:

“If [in Forssell] an event occurs where a previously calculated silent period is no longer valid, such as a user changing their mind concerning when to use a channel, and a silent period needs to be added, a null data frame as taught by Bender can be implemented in the next active block and then another silent period can be restarted for a transmitting terminal.”

The Applicants submit that, here, the Examiner appears to be proposing that the “null data packets” of Bender be added to the “silent period” system of Forssell when a previously calculated silent period in Forssell is no longer valid. The Applicants disagree with the Examiner. Although the Applicants do not agree that a combination of Forssell and Bender is proper, the Applicants submit that one of ordinary skill in the art would not be motivated to combine Forssell and Bender, as indicated by the Examiner, for at least the reasons that a use of the null data packets of Bender would neither be needed nor desired in Forssell.

As similarly indicated in the Applicants Response to final Office Action dated February 2, 2009, the Applicants submit that in Forssell there always appears to be an indication of how long the silent (passive) period actually is. The Applicants submit that, in Forssell, every time a data frame is transmitted the transmitting party can unambiguously define if a silent period is started, continued, or stopped. As such, the Applicants submit that the null packets of Bender are not needed in Forssell especially for the reasons as argued by the Examiner in the Advisory Action.

Forssell discloses that this signaling information may include a number (N) value which refers to the number of passive blocks periods or how long the passive period will be. The transmitting terminal can independently define this N value which is transmitted to the network, (par. [0052]). In addition to the N value, Forssell discloses the signaling information can include a temporary block flow (TBF) release value (TR) which indicates whether a data block is the last one of a connection or whether it is not. If the TR value is set to “1” the TBF is considered to be released,

whereas if the TR value is set to “0” the network considers the TBF to be open. Further, Forssell discloses that the information provided to the network also includes a count down value (CV’). According to Forssell when the CV’ value is not equal to “0” the network interprets it so that the mobile station has more data blocks to be transmitted and the network is able to assign also the next uplink transmit permissions for the same mobile station. When the CV’ value is equal to “0” the network interprets it so that the first mobile station has no more data blocks to be transmitted at the time and the network may give the next N uplink transmit permissions to some other mobile station or stations, (par. [0062]).

The Applicants submit that based on this signaling information in Forssell, as stated above, there is seen to already be available ways to prolong or shorten the passive period if a need arises. If the terminal wants to end or change the length of the passive period it may transmit a signaling message where it can define whether the silent period continues, an active period will start, or whether the temporary block flow can be released. The Applicants submit that by using this information signaling it is possible for the terminal to keep a created temporary block flow available even when there is no data to be transmitted. Further, according to Forssell this information can be transferred on a control channel at any time (par. [0042]). The Applicants submit that for at least these reasons the proposed combination is seen to be improper and the rejections should be removed.

In addition, the Applicants contend that if the null data frame (e.g., null data packet) of Bender were “implemented in the next scheduled active block,” as suggested by the Examiner, then the TR, CV’, and the value N of the signaling information in Forssell would not be available. In this case the management of the silent (passive) period, as disclosed by Forssell, would not be possible.

Furthermore, if “null data packets” of Bender were somehow added in a silent period of Forssell then a transmission capacity of a channel in Forssell would be negatively affected by the added “null data packets.” The Applicants note that at least in paragraphs [0038] to [0040] of Forssell there is disclosed motivation for optimizing channel capacity by utilizing silent periods. Thus, the

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Applicants contend that Forssell is seen to teach away from any such addition of unnecessary packets such as the null data packets as in Bender. Further, the Applicants submit that Bender admits on column 7 on lines 4 – 23 that sending “null data packets” consume unnecessary available transmission bandwidth (which Forssell wants to avoid). The unnecessary consuming of bandwidth is clearly admitted in Bender to be a problem.

Moreover, the Applicants contend that, for at least the reasons stated above, it can be seen that such a modification, as proposed by the Examiner, would at least change the principle of operation for Forssell, and likely render Forssell inoperable for its intended purpose.

MPEP 2143.01 IV states:

THE PROPOSED MODIFICATION CANNOT CHANGE THE PRINCIPLE OF OPERATION OF A REFERENCE

If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959) (Claims were directed to an oil seal comprising a bore engaging portion with outwardly biased resilient spring fingers inserted in a resilient sealing member. The primary reference relied upon in a rejection based on a combination of references disclosed an oil seal wherein the bore engaging portion was reinforced by a cylindrical sheet metal casing. Patentee taught the device required rigidity for operation, whereas the claimed invention required resiliency. The court reversed the rejection holding the "suggested combination of references would require a substantial reconstruction and redesign of the elements shown in [the primary reference] as well as a change in the basic principle under which the [primary reference] construction was designed to operate." 270 F.2d at 813, 123 USPQ at 352.).

MPEP 2143.01 V states:

THE PROPOSED MODIFICATION CANNOT RENDER THE PRIOR ART UNSATISFACTORY FOR ITS INTENDED PURPOSE

If proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984) (Claimed device was a blood filter assembly for use during

medical procedures wherein both the inlet and outlet for the blood were located at the bottom end of the filter assembly, and wherein a gas vent was present at the top of the filter assembly. The prior art reference taught a liquid strainer for removing dirt and water from gasoline and other light oils wherein the inlet and outlet were at the top of the device, and wherein a pet-cock (stopcock) was located at the bottom of the device for periodically removing the collected dirt and water. The reference further taught that the separation is assisted by gravity. The Board concluded the claims were *prima facie* obvious, reasoning that it would have been obvious to turn the reference device upside down. The court reversed, finding that if the prior art device was turned upside down it would be inoperable for its intended purpose because the gasoline to be filtered would be trapped at the top, the water and heavier oils sought to be separated would flow out of the outlet instead of the purified gasoline, and the screen would become clogged.).

"Although statements limiting the function or capability of a prior art device require fair consideration, simplicity of the prior art is rarely a characteristic that weighs against obviousness of a more complicated device with added function." *In re Dance*, 160 F.3d 1339, 1344, 48 USPQ2d 1635, 1638 (Fed. Cir. 1998) (Court held that claimed catheter for removing obstruction in blood vessels would have been obvious in view of a first reference which taught all of the claimed elements except for a "means for recovering fluid and debris" in combination with a second reference describing a catheter including that means. The court agreed that the first reference, which stressed simplicity of structure and taught emulsification of the debris, did not teach away from the addition of a channel for the recovery of the debris.).

The secondary document (Soulabail) discloses a time division duplex (TDD) system which is functionally a circuit switched system (i.e., half-duplex system). The Examiner has identified "a variable guard time" in Soulabail, whose length can vary between the different transmission directions (downlink and uplink). The Applicants note that if a surplus guard period is added to the system of Forrsell it should be added in the end of the silent period. However, the Applicants submit that, for at least the reasons stated above, it can be seen that an added guard time can more easily be implemented by utilizing the CV' and TR values, and the N value of Forrsell rather than by incorporating the variable guard time of Soulabail, though not agreed to as proper. Moreover, if the guard period of Soulabail were somehow utilized in addition to the silent (passive) period of Forrsell then the channel capacity in Forrsell would also be negatively affected, as similarly stated above. The Applicants contend that a person of ordinary skill in the art would clearly not

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be motivated to combine Soulabail and Forssell, though not agreed to as proper, for at least the reason that adding surplus guard period of Soulabail to the system of Forssell would be contradictory to a motivation in Forssell of optimizing channel capacity, as similarly stated above.

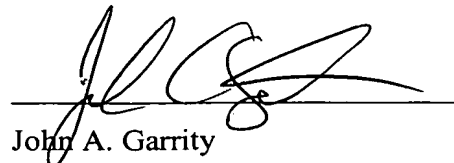
Further, the Applicants submit that none of the references cited by the Examiner can be seen to overcome the shortfalls of Forssell, Bender, and Soulabail as stated above.

The Applicants contend that for at least these reasons the rejections of independent claims 1, 8, 12, 15, 22, and 24 are seen to be improper and the rejections should be removed.

In addition, it is respectfully submitted that all dependent claims 2-7, 9-11, 13-14, 16-21, and 25-30 are allowable due to their dependence on an allowable independent claim 1, 8, 12, 15, and 24, respectively.

Based on the above explanations and arguments, it is clear that the references cited cannot be seen to disclose or suggest claims 1-22 and 24-30. The Examiner is respectfully requested to reconsider and remove the rejections of claims 1-22 and 24-30 and to allow all of the pending claims 1-22 and 24-30 as now presented for examination. Should any unresolved issue remain, the Examiner is invited to call Applicants' representative at the telephone number indicated below.

Respectfully submitted:


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5/5/2009
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